

difference between that word and the word "pedlar" used in the Vagrancy Act, 1824. In the *Concise Oxford Dictionary* "hawker" is given the meaning of "one who hawks goods" and "hawk" means "carry (goods) about for sale". In *Chambers' Twentieth Century Dictionary* "hawker" is given the meaning of "one who goes about offering the goods for sale; now confined to one who uses a beast of burden or vehicle (as distinguished from a pedlar, who carries his wares bodily)". In *Stroud's Judicial Dictionary*, 3rd edition under the heading "Hawk: Hawker" there is the following definition: "'Hawkers' be a sort of deceitful fellows that go from place to place buying and selling brass, pewter, and other merchandize, that ought to be uttered in open market (Cowel, cited *Morrill v. State*⁽²⁾)". "Hawker" and "pedlar" have been the subject of interpretation in a Canadian case and in a New Zealand case—see *Words and Phrases Judicially Defined* under "Hawker": in the Canadian Case *R. (Best) v. Veniot*⁽³⁾ Graham, J. at p. 31 said:—

"A 'hawker' is technically one who carries his goods from a wagon or other vehicle. The word 'pedlar' may have originally designated one who went on foot with a pack; but in this country the words 'hawker' and 'pedlar' are generally considered equivalent in law."

In the New Zealand case, *Nicholson v. Olds*⁽⁴⁾ Williams, J., at p. 312 said:—

"The definition of a 'hawker' given in Burn's Justice is, 'an itinerant trader who goes about from place to place carrying with him and selling wares'. A pedlar is defined as 'a hawker in small wares'. There is thus no very precise line drawn between the terms 'hawker' and 'pedlar', and it seems to me that the power conferred upon the Council by the subsection is to draw this line, and not to give an entirely new meaning to well-known English words."

I do not consider that the legislature intended to make, or has in fact made any change by using the word "hawker" in section 3(1) of the Vagrancy, 1939, instead of the words "petty chapman or pedlar" used in the Imperial Act, and I am of opinion that that provision was not intended to apply and does not apply to any person who does a single act of street trading; it does not apply to any person who hawks goods without a licence; it applies to persons who are hawkers i.e. persons carrying their goods from town to town, from house to house or from place to place and who offer their goods for sale without a licence or other authority. With regard to the phrase "wandering abroad" used in the said sub-section, the fact that the appellant was at one particular place when he was selling tickets does not necessarily mean that he was not "wandering abroad" for the purposes of that provision. Thus in *Mathers v. Penfold*⁽⁵⁾ Darling, J., at pp. 519-521 said:—

"The words of the Statute (i.e. the Vagrancy Act, 1824), are obviously aimed at persons.....who are wandering abroad, who are placing themselves at the corners of streets and begging or soliciting alms, such

persons as are described in the judgment of Cave, J., in *Pointon v. Hill*⁽⁶⁾.....as having given up work, and adopted begging as a habit or mode of life. Those persons are clearly, I think, within the statute."

There is no evidence whatever that the appellant was a "hawker" for the purposes of sub-section (1) of section 3 of the Vagrancy Ordinance, 1939.

In view of the above it is not necessary for me to decide whether cinema tickets are goods and whether the selling of such tickets amounts to trading, for the purposes of that section, or whether a licence is required for the selling of such tickets. Section 3(1) of the Vagrancy Ordinance, 1939, does not cover the facts as alleged against the appellant.

I, therefore, allow the appeal and set aside the conviction and sentence of the Court below.

Appeal allowed.

Re LEE KIAN SOO, AN ARCHITECT.

[A. C. J. (Brown, J.) December 10, 1952]

[Singapore — Originating Motion No. 47 of 1952]

Architects Ordinance, 1941, s. 8 — Professional fee charged less than scale prescribed — Failure by architect to exercise adequate supervision — Order of Board of Architects to strike name off Register — Appeal from — Invalidity of Bye-law 13(14) of the Architects Bye-laws, 1941 — Procedure.

This was an appeal by way of Originating Motion to set aside the Order of the Board of Architects directing that the appellant's name be struck off the Register. The appellant was a registered architect under the provisions of the Architects Ordinance, 1941, and substantially the case against him was that he had charged fees less than the scale of fees fixed by the Board of Architects and had failed to exercise adequate supervision of the building in question. There were a number of grounds argued on the appeal all of which are set out and dealt with fully in the judgment. For the appellant it was contended, *inter alia*, that Bye-law 13 (14) of the Architects Bye-laws, 1941 (which deems it to be infamous conduct under section 8 of the Architects Ordinance, 1941, "to deviate from by charging less than the scale of fees authorised by the Board of Architects except with the consent of the Board in writing") is invalid as being repugnant to section 8(1) of the Ordinance and therefore *ultra vires* and void.

Held: Bye-law 13 is invalid by reason of the words "and shall be deemed to be conduct which is infamous in a professional respect under section 8". These words purport to take away from the Board a duty with which the legislature has entrusted them in a disciplinary case; and they purport to deprive an architect of the right not to have his conduct stigmatised as "infamous" except by the judgment of his professional colleagues after a full consideration of the facts.

On the question of what is the duty to supervise which an architect owes to his client when the client is an owner-builder,

Held: an architect's duty to an owner-builder is to perform the work which it has been mutually agreed that he should do, i.e. his duty to his client is governed by his contract.

Held also: the correct procedure for appealing to the High Court under the provisions of section 8(3) of

the Architects Ordinance, 1941, is by way of Originating Motion.

Cases referred to:—

- (1) *Goonetilleke v. Medical Council* 12 S.S.L.R. 95.
- (2) *Leeson v. General Council of Medical Education & Registration* 43 Ch. D. 366 at p. 372.
- (3) *R. v. Allan* 4 B. & S. 915.
- (4) *R. v. Architects' Registration Tribunal, ex parte Jaggar* (1945) 2 All E.R. 131 at p. 135.
- (5) *O'Reilly & Ors. v. Gittens* (1949) A.I.R. 313.
- (6) *MacLean v. Workers' Union* (1929) 1 Ch. 602 at pp. 620 & 624.

The following authorities were also cited: *Leek & Moorlands Bldg. Society v. Clark & Ors.* (1952) W.N. 414; *General Medical Council v. Spackman* (1943) A.C. 627; *Paglar v. Medical Council* (1933) M.L.J. 241; *R. v. Handsley & Ors., Justices of the Borough of Burnley* 3 Q.B.D. 383; *R. v. Bishop of St. Albans* 0 Q.B.D. 454; *Alkaff & Co. v. Sir Shenton Thomas & Ors.* (1937) M.L.J. 28; *Lee v. Showman's Guild of Great Britain* (1952) 1 All E.R. 1175; *Daly v. General Medical Council* (1952) 2 All E.R. 666; *Institute of Patent Agents & Ors. v. Joseph Lockwood* (1894) A.C. 347 at p. 360; *Minister of Health v. R.* (1931) A.C. 494; *R. v. Wilkinson* (1891) 1 Q.B. 722; *Churchwardens & Overseers of West Ham v. Fourth City Mutual Bldg. Society* (1892) 1 Q.B. 654 at p. 660; *Allinson v. General Council of Medical Education & Registration* (1894) 1 Q.B. 750 at p. 757; *Halsbury's Laws*, 2nd Ed. vol. 21 p. 538 and vol. 31 p. 560; *Maxwell on Interpretation of Statutes*, 9th Ed. p. 54.

APPEAL.

L. A. J. Smith for the appellant.

K. A. Seth for the respondent Board of Architects.
Cur. Adv. Vult.

Brown, J.:—This is an appeal by way of Originating Motion to set aside the Order of the Board of Architects dated 4th September, 1952, directing that the appellant's name be struck off the Register.

The first ground of appeal is that the Board erred in law in finding that a registered architect is bound by law to charge fees in accordance with any scale. On behalf of the appellant it has been argued that the scale of fees contained in Notice No. 2257 of Gazette No. 89 of 1932 was made by the Board with the approval of the Governor in Council under Cap. 64, and that when the Architects Ordinance, 1941, repealed Cap. 64

it also repealed this scale of fees. The two reasons advanced in support of this argument were that the new Ordinance (a) set up a new Board and (b) required the approval of the Legislative Council (in place of the approval of the Governor in Council) of the scale of fees which the Board has power to fix. But it seems to me that the scale of fees remained in force by virtue of section 5(b) of the Interpretation Ordinance Cap. 1 (which had not then been repealed by the Interpretation and General Clauses Ordinance, 1951). There is nothing in this scale of fees which is inconsistent with the Architects Ordinance, 1941, and there is nothing in that Ordinance which shews an intention to repeal them. Any scale of fees which the Board may fix under the new Ordinance must have the approval of the Legislative Council. But this scale of fees was fixed under the old Ordinance and received the approval of the Governor in Council, as the old Ordinance required. This scale of fees was law when the old Ordinance was repealed, and it is law now.

It will be convenient if I leave the second ground of appeal until the end, and I now proceed to the third ground. The third ground of appeal is that the Board was not properly constituted because two of the members who sat were private practitioners with similar practices to the appellant. The complaint here is not that the two members were private practitioners (by section 3(6) of the Ordinance it was necessary that one of them should be) but that they have practices similar to the appellant's practice and therefore had a pecuniary interest in the making of an order by which a professional competitor was removed. As I understand the law it is that before a person can be disqualified from adjudicating upon the ground that he has a pecuniary interest he must be shewn to have such a substantial interest in the result as to make it likely that he has a real bias. Much reliance was placed by the appellant on the local case of *Goonetilleke v. Medical Council*⁽¹⁾. That case was decided by this Court in 1911 when conditions in Singapore were very different from what they are to-day. And I think that the following passage from the judgment of Fisher, J. (at p. 107), furnishes the explanation of that decision:

"Here there can be no doubt that the possibility exists. The appellant and Dr. Galloway both have a large native practice. The number of medical men enjoying that sort of practice in Singapore is quite limited. And if the appellant is deprived of his right to practice, his patients will have to go elsewhere. It is scarcely conceivable that Dr. Galloway should not benefit to some extent by such a result."

It is sufficient to say that the only evidence in this case that these two members had any pecuniary interest is contained in para. 13(a) of the appellant's affidavit. It falls far short of shewing that either of them are likely to benefit as Dr. Galloway was said to be likely

to benefit in *Goonetilleke's* case; and in my opinion it altogether fails to establish that either of these two gentlemen were likely to have any real bias by reason of their pecuniary interest.

The fourth ground of appeal alleges that the Board was in the position of being prosecutor and judge; alternatively that their Registrar Mr. Brundle, who was a member of the Board, was prosecutor and judge having conducted the preliminary investigations. In the case of *Leeson v. General Council of Medical Education and Registration*⁽²⁾ a body called the Medical Defence Union had instituted the proceedings before the General Council of Medical Education and Registration. Two of the members of the latter body who sat upon the enquiry were also subscribing members of the Medical Defence Union. They were subscribing members, but not being on the Council of the Medical Defence Union they had personally taken no part in the decision to institute proceedings. By a majority the Court of Appeal held that this did not vitiate the proceedings. In *Reg. v. Allan*⁽³⁾ a voluntary Association of persons who were desirous of protecting the fishing rights of riparian owners on the river Tees, acted through a Committee whose business it was to instruct the secretary to institute prosecutions against persons who acted in contravention of the law. In one such prosecution the magistrates who sat on the bench were three. All were members of the association, and one was an active member of the committee. All three were held to be disqualified. Both in *Leeson's* case and *Allan's* case the persons in question were members of the body or society which instituted the proceedings. That body or society was the prosecutor, and they were members of it. I can see no parallel between those cases and the present case. Here a written complaint was made to the Board of Architects by a building owner who had employed the appellant. To draw an analogy from our criminal procedure, here the "information" was laid by the building owner. And if (pursuing the analogy) it is said that Mr. Brundle, by writing the letters, was in a position which is analogous to a police officer who conducts the investigation, I think that, although technically a member of the Board, his position was in fact the same as that of the clerk to the appeal tribunal in the case of *R. v. Architects' Registration Tribunal, ex parte Jaggar*⁽⁴⁾. As the Government Architect, section 3(3) of the Ordinance makes him technically a member of the Board. But it is clear from para. 3 of his affidavit dated 7th October that at Board meetings he sits in his capacity as Registrar and not as a member. He takes no part in the Board's decisions, and he does not vote. In referring to this case he says: "I acted as Registrar. I did not participate in the decision of the Board to

take action against the said Lee Kian Soo under section 8 of the Architects Ordinance and to order the cancellation of his certificate of registration." It seems to me that neither the Board nor Mr. Brundle can appear, upon any reasonable view of the matter, to have been in the position of prosecutors as well as judges in this case.

The fifth ground of appeal is that the appellant committed no breach of duty to his client by failing to supervise the erection of the bungalow, "even if there was any such failure in fact of which there is no evidence." Although it would appear from para. 2 of the Registrar's letter dated 4th September (in which he informs the appellant of the Board's decision), that the penalty has been inflicted for two offences (1) contravening Bye-law 13(14) and (2) relinquishing part of his duties of supervisor, Mr. Seth on behalf of the Board has stated that the appellant was struck off the Register for the one offence of contravening the bye-law, but that in considering the penalty the reason given by the appellant—that he agreed to reduce his fee in return for not being required to give the usual supervision—was treated as an aggravating circumstance. The minutes of the meeting give no indication of the course which the discussion took about the arrangement to relinquish part of his supervision duties. But I assume from what appears in the minutes that the Board took the view that it was his failure to fulfil his obligations to his client that aggravated the offence of undercharging.

What then is the duty to supervise which an architect owes to his client when the client is an owner-builder? In para. 7 of his affidavit the City Architect expresses his view that an architect cannot properly agree to forego any part of his duties of supervision. But that view is based on the requirements of certain Municipal Building Bye-laws, which the City Architect enumerates in his affidavit. As I understand the Board's minutes they were not concerned with any failure on the part of the appellant to comply with the Building Bye-laws. They were concerned with his failure in his duty to his client. They considered that in agreeing to relinquish part of his duty to supervise the work he was failing in his professional duty to his client.

I can have no doubt that an architect's duty to an owner-builder is to perform the work which it has been mutually agreed that he should do. In other words, his duty to his client is governed by his contract.

Reference was made to Rule 1(b) at page 547 of the *R.I.B.A. Kalendar* (1949—1950) which reads as follows:—

"The Architect shall give such periodical supervision and inspection as may be necessary to ensure that the works are being executed in general accordance with the contract; constant supervision does not form part of the duties undertaken by him."

But that rule refers to a case where there is a building contract with a builder. Here there was no such building contract. The client was an owner-builder. An owner-builder may think that he knows all and more than the architect. He may indeed have been an architect at one time himself. He may want as little interference from the architect as possible. He may not want to employ him at all. But the Municipal Building Bye-laws compel him to. By Bye-law 40(a) only a registered architect is authorised to submit plans. By Bye-law 41(c) no certificate of fitness can be given for a reinforced concrete building unless the architect certifies that he has personally supervised its erection. Other bye-laws necessitate the employment of an architect. If an owner-builder agrees with an architect that he will pay him his scale fee upon the condition that he will exercise no more supervision than is required to enable him to give his certificate honestly and otherwise to comply with the Building Bye-laws, the architect's obligation to his client is limited to that and no more, because that is what he has contracted with his client to do.

Then what was the contract in this case? In his letter at (23) the client says that in return for the agreed fee of \$500 the appellant was to be "responsible until the completion of the bungalow." The appellant in his letter at (28) says that the understanding was the client "would personally supervise every phase of the building operations, so that I should not be required to attend as often as I would have to if the construction was entrusted to an ordinary building contractor." From those two letters I infer that the contract was that for his fee of \$500 the architect was to do no more supervision work than was necessary to comply with the Building Bye-laws and give an honest certificate of fitness. If that in fact was the contract I cannot see that there was any impropriety about it, except for the impropriety of the fee.

Before the Board adopted the view that the relinquishment of part of his supervision duties to his client aggravated the offence of undercharging it was their business to find out what exactly the contract was. The material before me is quite insufficient to say whether they did this or not. But in the appellant's affidavit there is no suggestion that they did not. And I am not prepared to assume that they did not. For this reason, if it had been necessary to arrive at a decision upon this ground — and in view of my decision regarding the invalidity of Bye-law 13 it is not necessary — I should not have interfered with the Board's order.

The contravention of the bye-law (if it had been valid) had been admitted by the appellant in the correspondence. As for the "aggravating circumstance" I should have left it to the Board, if and when the appellant had applied for re-instatement under section 8(4) of the Ordinance, to reconsider the matter with particular reference to the two questions of (a) what supervision work did the appellant and his client agree that the appellant should do, (b) in what way (if at all) did the appellant fail in his obligations under the agreement.

Grounds 6 and 7 must be considered together. Ground 7 was added by leave of the Court on the first day of the hearing, and grounds 6 and 7 read as follows:—

6. That the said order be set aside on the ground that the evidence given before the said Board in relation to the conduct of the appellant the said Board misdirected themselves in finding that the appellant was guilty by reason of his acts.

7. That no proper charge was made against the appellant, and in the absence of such charge it was impossible for the appellant to know the nature of the proceedings and/or the grounds of complaint against the appellant; and the Board failed to observe the principles of natural justice.

In the case of *O'Reilly v. Gittens*⁽⁵⁾ the Privy Council cited with approval the following passage from the Judgment of Maugham, J., in *Maclean v. Workers Union*⁽⁶⁾:—

"At the outset it may be expedient to point out that the question will not be whether the Court considers that the conduct of the defendants or their executive committee was fair and just: but the very different question whether the case is one in which the Court has power to interfere.

The jurisdiction of the Courts in regard to domestic tribunals — a phrase which may conveniently be used to include the committees or the councils or the members of trade unions, of members' clubs, and of professional bodies established by statute or Royal Charter while acting in a quasi-judicial capacity — is clearly of a limited nature. Parenthetically I may observe that I am not confident that precisely the same principles will apply in all these cases; for it may be that a body entrusted with important duties by an Act of Parliament is not in the same position as, for example, the executive committee in the present case. Speaking generally, it is useful to bear in mind the very wide differences between the principles applicable to Courts of justice and those applicable to domestic tribunals. In the former the accused is entitled to be tried by the judge according to the evidence legally adduced and has a right to be represented by a skilled legal advocate. All the procedure of a modern trial including the examination and cross-examination of the witnesses and the summing up, if any, is based on these two circumstances. A domestic tribunal is in general a tribunal composed of laymen. It has no power to administer an oath and, a circumstance which is perhaps of greater importance, no party has the power to compel the attendance of witnesses. It is not bound by the rules of evidence: it is indeed probably ignorant of them. It may act, and it sometimes must act, on mere hearsay, and in many cases the members present or some of them (like an English jury in ancient days) are themselves both the witnesses and the judges. Before such a tribunal counsel have no right of audience"

(a consideration which does not exist in the present case, although in fact no counsel was present before the Board at their meeting)

"and there are no effective means for testing by cross-examination the truth of the statements that may be made. The members of the tribunal may have been discussing the matter for weeks with persons not present at the hearing, and there is no one even to warn them of the danger of acting on preconceived views."

It is apparent and it is well settled by authority that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence, since evidence in the proper sense there is none."

Maugham, J., then cited the passage from the judgment of Bowen, L.J., in *Leeson's case*⁽²⁾ :—

"There must be due enquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at if he has had a full opportunity of being heard."

There is no suggestion that at the meeting on the 5th August the appellant was not given a full opportunity to be heard. What is said is that there was no "charge" and that therefore appellant did not know the precise allegation that he was required to answer. The Board will not take it amiss if I say that it is advisable in every disciplinary case, no matter what may have been said in previous correspondence, that the person concerned should be sent an "*ad hoc*" letter requesting him to appear at the place, date and time fixed for the hearing, and setting out in clear and precise terms the "charge" or allegation which he has to meet, with a reference to the number of the rule, regulation bye-law or other written provision (if any) which he is alleged to have contravened. I believe this to be the practice in the case of every statutory Board which is invested with disciplinary powers, and it seems to be borne out in all the cases which have been cited. It was not done in this case. But is it possible to doubt that the appellant knew what offence he was alleged to have committed? The correspondence shews :

(1) that he had been sent a copy of the client's letter at (22), in which it was stated that he had agreed to receive a supervision fee of \$500;

(2) in para. 3(b) of his letter at (25) he states: "I agreed to receive \$500 as supervision fee";

(3) in para. 2(b) of Mr. Brundle's letter at (26) his attention was drawn to his apparent contravention of Bye-law 13(14);

(4) in para. 2 of his letter at (28) he again admits that he agreed to the "reduced fees".

In the light of this correspondence it seems to me impossible to say that the appellant did not know that he was being invited to attend the meeting in order to give him the opportunity of answering the allegation (which he had twice admitted) of contravening the provisions of Bye-law 13(14). He knew the allegation, and he was given a full opportunity of being heard. It is not suggested that the Board's decision was not honestly arrived at. In those circumstances I cannot think it would be right for this Court to interfere with the

Board's exercise of the disciplinary power, with which the statute entrusts it, unless the bye-law which the appellant contravened is invalid.

This brings me to the second ground of appeal, which in my view is fatal to the Board's order. The second ground of appeal is that Bye-law 13(14) of the Architects Bye-laws, 1941 (which deems it to be infamous conduct under section 8 of the Ordinance "to deviate from by charging less than the scale of fees authorised by the Board of Architects except with the consent of the Board in writing") is invalid as being repugnant to section 8(1) of the 1941 Ordinance. Para. (b) of that section empowers the Board, after due enquiry, to strike a person's name off the register if he is

"guilty of any act or conduct which in the opinion of the Board is infamous in any professional respect, whether such act or conduct arises from the breach of the provisions of this Ordinance or of any rule or bye-law made thereunder or otherwise."

The Legislature is here saying in clear terms that whether professional misconduct is to be stigmatized as "infamous" is a matter for the opinion of the Board. But reading section 8(1) as a whole it seems to me that both the language of the section and the common sense of the matter require the Board to form its opinion upon the facts of each particular case. If that view is correct, then Bye-law 13 is in conflict with the section, because the bye-law purports to settle by law the question of what is "infamous" (regardless of the facts of any case) and thus to prevent the Board sitting in its disciplinary capacity from forming an opinion of its own.

This view has been strenuously contested upon three grounds. Firstly, it is said that the word "Board" must be given the meaning accorded by the definition and means the whole corporate body. But by the provisions of section 3(6) a quorum of members have all the powers of the full Board. Therefore I cannot see how it can be disputed that the section covers a quorum of members sitting as a disciplinary committee. Secondly, it is said that there is nothing in the section to prevent the Board from expressing their opinion in the form of a bye-law that certain acts or forms of conduct are to be deemed "infamous." I think that this point must to a large extent depend upon the previous point, and that it loses force if it is appreciated that the word "Board" (by virtue of section 3(6)) also means a quorum of members sitting as a disciplinary committee. But the main objection to this point is that in my opinion the language of section 8 read as a whole clearly contemplates the hearing of individual cases. Thirdly, it is said that the conflict is not between the bye-law and section 8(1) (b), but between section 8(1) (b) and section 4(1) (e)

(under which the bye-law was made). I cannot agree with this view. It seems to me that the bye-law is *intra vires* section 4(1)(e) coupled with section 4(2)(a). The bye-law is bad not because it is *ultra vires* the enabling section but because it is inconsistent with, and repugnant to, section 8(1)(b) in that it purports to deprive the Board sitting in its disciplinary capacity of a duty which the Legislature has laid upon it.

I have already said that in laying this duty upon the Board the Legislature has in my view taken the course which is consistent with common sense. If an architect's professional misconduct is to be branded as "infamous" the proper people to apply the brand are members of his profession sitting in judgment on him, who after hearing his defence and weighing all the facts will form their opinion in the light of their professional experience and by the application of their professional standards. By Bye-law 13 the Board in its legislating capacity has purported to remove from the purview of its members sitting in their quasi-judicial or disciplinary capacity any consideration of whether the misconduct amounts to what is "infamous" in the case of twenty-seven forms of misconduct. By this bye-law these twenty-seven forms of misconduct are "deemed to be conduct which is infamous in a professional respect under section 8." No matter what the excuse or the mitigating circumstances, the Board in its disciplinary capacity is precluded from forming any opinion upon whether the man's conduct is "infamous" or not. Being deprived of this right (and duty) which the Legislature conferred upon it, it is left only with the right (and the duty) to decide whether, having regard to all the facts, the person whose conduct they are compelled by the bye-law to deem "infamous" should be struck off. But whatever their decision, and however strong their sympathy, the brand of "infamous" upon their professional colleague must remain.

Mr. Seth has drawn my attention to the Rules made by the Bar Committee under the Advocates and Solicitors Ordinance, which set out what "improper conduct" is. Section 25(2)(b) of that Ordinance appears to leave the question of whether the conduct amounts to "improper conduct" in any particular case to the opinion of the Court. He says that this affords a parallel to this case. I do not feel called upon to express an opinion upon it; indeed it would in my view be wrong to do so. If and when the point should come up for decision under the Advocates and Solicitors Ordinance no good purpose will be served by my having expressed an opinion "obiter" in this case. In my opinion Bye-law 13 is invalid by reason of the words "and shall be deemed to be conduct which is infamous

in a professional respect under section 8." Those words purport to take away from the Board a duty with which the Legislature has entrusted them in a disciplinary case; and the purport to deprive an architect of the right not to have his conduct stigmatized as "infamous" except by the judgment of his professional colleagues after a full consideration of the facts.

In conclusion I have been asked to express my view upon the question of whether the procedure which has been adopted by the appellant, by way of Originating Motion, is the correct procedure for appealing to this Court under the provisions of section 8(3) of the Ordinance. In my opinion it is. No procedure is laid down, and therefore by Rule 2 of the Preliminary Rules of the Supreme Court Rules the procedure for the time being in force in England is to be followed. The form of Notice of Appeal in this case follows the form provided in *Lord Atkin's Encyclopaedia of Court Forms* at page 414 (Vol. 2).

The appeal is allowed. It is allowed upon the technical point that the bye-law is invalid. I order that each party pays its own costs.

Appeal allowed.

**Re SHAIKH SALMAN BIN ABDUL SHAIKH
BIN MOHAMED SHAMEE, DECD.;
SYED MOHAMED ALKAFF & ANOR.
v.
SYED ABUBAKAR ALKAFF & ANOR.**

[O. C. J. (Whitton, J.) September 18, 1953]

[Singapore — Originating Summons No. 126 of 1953]

Trusts — Rule against perpetuities — Trust in favour of poor relatives — Whether charitable — Whether vested interests created — Family — Meaning of.

By a Deed of Settlement dated 2nd April 1928 the Settlor conveyed property to the defendants as Trustees, and directed that the income should be held upon various Trusts until "The expiration of the period of twenty-one years from the date when the youngest of the Settlor's sons who shall live to attain the age of twenty-one years shall attain that age or if the Settlor shall die leaving a son or sons under the age of twenty-one years who shall not live to attain the age of twenty-one years then at the expiration of twenty-one years from the date of the death of such son or the last survivor of such sons (if more than one) as shall not live to attain the age of twenty-one years or if no son or sons of the Settlor are under the age of twenty-one years at the date of the Settlor's death then at the expiration of twenty-one years from the date of the Settlor's death", and that thereafter the corpus of the properties should be held in trust for a class of persons to be determined at that date. The Settlor had four sons born after the date of the Settlement, and he died in 1941 leaving sons surviving him, two of them still being minors at the present date. On an application by the Trustees of the Wills of the Settlor to have the validity of the trusts of the Settlement determined by the Court, —